

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA
RENO DIVISION

FILED
02 MAY 24 PM 2:12
BY [Signature]
CLERK

Amgad Hassan, Eman Etman, Nada Hassan,
Salma Hassan, Kareem Hassan,
Plaintiffs,

VS.

John Ashcroft, as Attorney General of the United
States; James Ziegler, as Commissioner of the
Immigration and Naturalization Service;
Ms. Roseanne C. Sonchik, District Director for
Immigration and Naturalization Service; Mr. Peter
S. Tilley, Supervisory District Adjudications
Officer; Ms. Donna Davis, District Adjudications
Officer; Ms. Ellen Sharp, National Visa Center;
Colin Powell, in him official capacity
As Secretary of State, United States State
Department, and United States of America

CIVIL ACTION FILE NO.

CV-N-02-0302-DWH-RAM

**PLAINTIFFS', EMERGENCY MOTION FOR ADJUCICATION OF
COMPLAINT FOR WRIT OF MANDAMUS
And MEMORANDUM OF LAW IN SUPPORT OF MOTION**

Plaintiffs, Amgad Hassen, Eman Etman, Kareem Hassen, Salma Hassen and Nada Hassen, (hereinafter Amgad Hassen-Plaintiff) through counsel, hereby moves this Court for an Immediate Decision on their Complaint for Writ of Mandamus. In support of such Motion, Plaintiffs state through counsel as follows:

1. Plaintiffs' received a congratulations letter stated that they were among those randomly selected and registered for further consideration in the DV-2000 diversity immigrant program for fiscal year 2000 on March 24, 1999.
2. At the time the Plaintiff received the letter; he was in the United States on F-1 status and his family on F-2 status.
3. On April 7, 2000, the Plaintiff filed, along with each family member, Form I-485, Application for Permanent Residence, pursuant to Section 203 (c) of the Immigration and Nationality Act. These applications were supported by a notice from the United States

Department of State, National Visa Center congratulating you on being considered for the fiscal year 2000, Diversity Visa Program.

4. Upon filing of the I-485s, Applications for Permanent Residence, each of the Plaintiffs received their I-765, Employment Authorization Cards.

5. The Immigration and Naturalization Service (hereinafter the "Service") file shows on May 19, 2000, the Service office in Reno, Nevada requested the Plaintiffs' Diversity Visa Packet from the Department of State. The requested packet never arrived from the Department of State.

6. The Service did not make a second request for the Diversity Visa Packet until October 15, 2000 until five months later. The National Visa Center refused the visa request due to the fact that the program ended on September 30, 2000.

7. The Attachment to the Plaintiffs' I291 states that "[t]herefore, your "Application To Register Permanent Residence Of Adjust States" must be denied pursuant to Section 245 (i) of the Act is that an immigrant visa is not immediately available to you. The denial of the application is **without prejudice** and you may file a new application as soon as an immigrant visa is immediately available to you.

8. On review of the Plaintiff file under the Freedom of Information Act, a Memorandum to Mr. Peter S. Tilley, Supervisory District Adjudications Officer, Reno Office from Ms. Donna Davis, District Adjudications officer, Reno Sub Office states "[p]er your request a review of Service file A76 640 637 indicates that a request for the DV packet from the National Visa Center was made on May 19, 2000. A second request for the DV Packet from the National Visa Center was made on October 15, 2000. A review of the Service file indicates that the request was made on a sample form with a **return address to Chincoteague Island, VA. A clerical error was made by the Service not using the form from the Reno NV office. The Reno, NV office did us its fax cover sheet.**" The National Visa Center failed to advise the Reno, NV office that the DV Packet was sent to the Chincoteague Island, VA office. The documents are attached to the Complaint as Exhibit A.

9. Due solely to clerical error by the Service, using the wrong form and the National Visa Center not noting where the fax originated from, caused tremendous damage and harm to the Plaintiffs. Their I-485 Applications were denied because no visa numbers were received on a timely basis and their work cards are expired and the Service has their I-94s Duration of Status.

10. Mandamus jurisdiction is invoked under 28 U.S.C. sec. 1361 to compel an officer or employee of the I.N.S. or another government agency to perform a nondiscretionary duty owed to a party. To be entitled to mandamus, a party must establish: (1) a clear and certain claim; (2) that the duty owed is ministerial and so plainly prescribed as to be free from doubt; and (3) that no other adequate remedy is available. *Yu v. Brown*, 36 F.Supp.2d 922, 933-34 (D. New Mexico 1999); *Paunescu v. I.N.S.*, 76 F. Supp.2d 896 (N.D. Ill. 1999). In *Paunescu*, the Court states Mandamus may be used to compel adjudication and grant of visa in diversity adjustment even after fiscal year is ended.

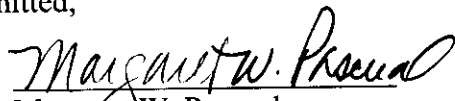
11. Under *Paunescu*, neither INA sec. 242(g), nor INA sec. 242(a)(2)(B) bar jurisdiction over mandamus to compel adjudication of diversity visa since compelling completion of diversity visa adjustment through mandamus is not seeking judicial review of any judgment regarding adjustment. This Mandamus is to request the visa numbers that were originally requested and sent to the wrong Service office.

12. This Mandamus requests the visa numbers that were sent to Chincoteague, VA. and in the alternative, the Plaintiffs request that their I-94s be returned and their status be "Duration of Status" will the Plaintiff complete his Doctorate Degree.

13. This court is the proper Court in which to seek this Order.

WHEREFORE, Plaintiffs request that this Court issue an Order to the National Visa Center to release visa numbers for the Plaintiffs and permit the Service to adjudicate their Adjustment Applications or in the alternative, compel the Service to place the Plaintiffs in the position their were before filing the Applications as Student with "Duration of Stay" status.

Respectfully submitted,



Margaret W. Pascual
California State Bar No. 128971
Attorney for Agmad Hassen and family
Plaintiffs

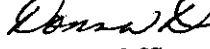


U.S. Department of Justice
Immigration and Naturalization Service

*1351 Corporate Blvd.
Reno, NV 89502-7102*

May 09, 2001

MEMORANDUM FOR PETER S. TILLEY
SUPERVISORY DISTRICT ADJUDICATIONS OFFICER
RENO OFFICE

FROM: Donna Davis 
District Adjudications Officer
Reno Sub Office

SUBJECT: Amgad Ahmad Hassann – A 76 640 637

Per your request a review of Service file A76 640 637 indicates that a request for the DV Packet from the National Visa Center was made on May 19, 2000,. A second request for the DV Packet from the National Visa Center was made on October 15, 2000. A review of the Service file indicates that the request was made on a sample form with a return address to Chincoteague Island, VA. A clerical error was made by the Service not using the form from the Reno, NV office. The Reno, NV office did use it's fax cover sheet. The National Visa Center failed to return the DV Packet requested to the requesting office. Two confirmed faxed receipts are in the Service file indicating the Reno office fax cover sheet was used.

The National Visa Center failed to advise the Reno, NV office that the DV Packet was sent to the Chincoteague Island, VA office. After the Reno, NV office made two attempts to get the DV Packet from the National Visa Center, the Reno office tried to get a visa number without the DV Packet and this was after the cut off date to be eligible for a visa. The National Visa Center informed the Reno, NV office on October 20, 2000, that a visa number was not available since the program ended on September 31, for the 2000 year. The National Visa Center faxed the Reno, NV office an updated request form on October 20, 2000.

RIGHT SIDE

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U.S. Department of Justice
Immigration and Naturalization Service

1351 Corporate Blvd.
Reno, NV 89502-7102

Date: OCT 17 2000

Amgad Ahmad Hassan
350 Glen Manor Drive
Reno, NV 89509

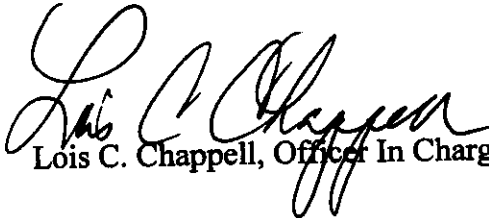
A76 640 37/dd

Dear Mr. Hassan,

On October 13, 2000, you came to the Reno Immigration office asking about the status of your application.

On April 07, 2000, you filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On May 19, 2000, the Service office in Reno, Nevada requested your Diversity Visa Packet from the Department of State. That packet has not arrived in the Reno, Nevada immigration office. On October 15, 2000, a second request was made for your Diversity Visa Packet to be sent to the Service office in Reno, Nevada. Your appointment for adjustment of status can not be scheduled until the Service receives your application for the Diversity Visa from the Department of State.

Sincerely,


Lois C. Chappell, Officer In Charge

dd

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Immigration and Naturalization Service
Reno Office1351 Corporate Blvd.
Reno, NV 89502**FAX TRANSMITTAL COVER SHEET****TRANSMITTED TO:**OFFICE/DEPARTMENT: NATIONAL VISA CENTERATTENTION: DV-LOTTERYFAX NUMBER: 603-334-0759 VOICE NUMBER: _____**TRANSMITTED BY:**FROM: DONNA DAVISDATE: 10/15/00DEPARTMENT: EXAMS

FAX NUMBER: (775) 784-5899 VOICE NUMBER: (775) 784-5186

NUMBER OF PAGES INCLUDING THIS COVER SHEET: (3)

REMARKS: Please send DV-Packet2nd request - 1st request was on 5/19/00

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RECEIVED**OCT 13 2000**INQUIRY/REQUESTU.S. DEPT. OF JUSTICE
IMMIGRATION & NATURALIZATION SVC.
RENO, NV (REN)

WE WANT TO BE OF SERVICE TO YOU. PLEASE BRING, OR MAIL, THIS COMPLETED FORM TO OUR OFFICE SO THAT WE MAY SERVE YOU MORE EFFICIENTLY AND QUICKLY.

DATE: 10/13/00

HASSAN AMGAD
(NAME) LAST/FAMILY FIRST MIDDLE

PHONE NO. 329-4929

350 GLENMANOR DR
STREET (MAILING) ADDRESS OR P.O. BOX NO.

RENO NV 89509
CITY STATE ZIP CODE

YOUR ALIEN REGISTRATION NUMBER: 07 6640637

DATE OF BIRTH: 10 26 1961
MONTH DAY YEAR

COUNTRY OF BIRTH: EGYPT

WHAT IS THE NUMBER OR TYPE OF APPLICATION YOU HAVE
PENDING?: Change of status

ON WHAT DATE DID YOU FILE THIS APPLICATION?
(NOTE: YOU MUST ATTACH A COPY OF YOUR RECEIPT.)

4/07/2000

WHAT IS YOUR QUESTION OR REQUEST CONCERNING SAID APPLICATION:

1- WHEN WILL I get an interview?
2- IS the application still active
i.e do I stand a chance to get
a permanent resident status or not

SIGNATURE

Amgad Hassan

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National Visa Center
32 Rocker
Portsmouth, NH 03801-2909

DIVERSITY VISA PROGRAM

(603) 334-0794 PHONE
(603) 334-0899 FAX

FACSIMILE COVER SHEET

TO: Ins office - Reno
Donna Davis

FROM: Portsmouth NH Visa Center

last week we recieved two 2000
ins requests. Im sure this was
an oversight as the program
ended on Sept 31st for 2000 yr.
Also I am faxing you an updated
request form for Reno.

thank you,

Ellen Sharp

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U.S. Department of Justice

Immigration and Naturalization Service
Reno Office

1351 Corporate Blvd.
Reno, NV 89502

FAX TRANSMITTAL COVER SHEET

TRANSMITTED TO:

OFFICE/DEPARTMENT: NATIONAL VISA CENTER

ATTENTION: TDV-LOTTERY

FAX NUMBER: 603-334-0759 VOICE NUMBER: _____

TRANSMITTED BY:

FROM: DONNA DAVIS

DATE: 10/15/00

DEPARTMENT: EXAMS

FAX NUMBER: (775-) 784-5899 VOICE NUMBER: (775-) 784-5186

NUMBER OF PAGES INCLUDING THIS COVER SHEET: (3)

REMARKS: Please send DV-Packet
2nd request - 1st request was on 5/19/00

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U.S. Department of Justice

Immigration and Naturalization Service
Reno Office

1351 Corporate Blvd.
Reno, NV 89502

FAX TRANSMITTAL COVER SHEET

TRANSMITTED TO:

OFFICE/DEPARTMENT: NATIONAL VLA CENTER
ATTENTION: DV-LOTTERY PROGRAM
FAX NUMBER: (603) 334-0759 VOICE NUMBER: _____

TRANSMITTED BY:

FROM: REN/INC
DATE: 5/19/00
DEPARTMENT: EXM

FAX NUMBER: (775) 784-5899 VOICE NUMBER: (775) 784-5186

NUMBER OF PAGES INCLUDING THIS COVER SHEET: (3)

REMARKS: PLEASE SEND DV PACKET.

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**US Immigration and Naturalization Service
Chincoteague District Office
100 Main Street
Chincoteague Island, VA 22222**

**Phone (703) 514-3156
Fax (703) 514-2093**

**TO: National Visa Center
32 Rochester Avenue
Portsmouth, NH 03801-2909
Fax: (603) 334-0759**

Subject: REQUEST FOR RETURN OF APPROVED IMMIGRANT PETITION

Please send the approved immigrant petition for the following beneficiary to the office noted above.

A-Number - 76 640 637

Receipt Number (or DV Rank Number) - 2000 AF 00023166

Name - HASSAN, AMGAD A

Date of Birth - 10/26/61

Country of Birth - EGYPT

A copy of the approval notice is attached (Yes/No) [Circle the correct response]

Yes

58

US Immigration and Naturalization Service
Chincoteague District Office
100 Main Street
Chincoteague Island, VA 22222

Phone (703) 514-3156
Fax (703) 514-2093

TO: National Visa Center
32 Rochester Avenue
Portsmouth, NH 03801-2909
Fax: (603) 334-0759

Subject: REQUEST FOR RETURN OF APPROVED IMMIGRANT PETITION

Please send the approved immigrant petition for the following beneficiary to the office noted above.

A-Number - 76640637

Receipt Number (or DV Rank Number) - 2000 AF 00023166

Name - HASSAN, AMGAD A

Date of Birth - 10/26/61

Country of Birth - EGYPT

A copy of the approval notice is attached (Yes/No) | Circle the correct response |

43



U.S. Department of Justice

Immigration and Naturalization Service
Reno Office1331 Corporate Blvd.
Reno, NV 89503**FAX TRANSMITTAL COVER SHEET****TRANSMITTED TO:**

OFFICE/DEPARTMENT:

ATTENTION:

FAX NUMBER:

NATIONAL VISA CENTER

DV-LOTTERY PROGRAM

(603) 334-0759

VOICE NUMBER:

TRANSMITTED BY:

FROM:

DATE:

DEPARTMENT:

RENY INC

5/19/00

EXM

FAX NUMBER: (775) 784-8899

VOICE NUMBER: (775) 784-8186

NUMBER OF PAGES INCLUDING THIS COVER SHEET:

REMARKS:

(3)

PLEASE SEND DV PACKET.

TRANSMISSION REPORTTHIS DOCUMENT (REDUCED SAMPLE ABOVE)
WAS SENT** COUNT **
3

*** SEND ***

NO	REMOTE STATION I. D.	START TIME	DURATION	#PAGES	COMMENT
1	1 603 334 0759	5-19-00 12:58	1'36"	3	

TOTAL 0:01'36"

3

XEROX TELECOPIER 7021

45

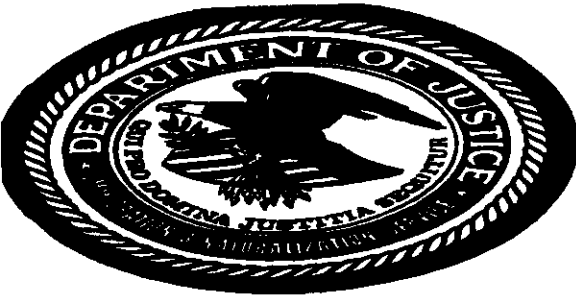
Confirmation Report - Memory Send

Time : Oct-15-2000 09:48
Tel line : +7757845899
Name : US IMMIGRATION

Job number : 961
Date : Oct-15 09:47
To : 86033340759
Document pages : 003
Start time : Oct-15 09:47
End time : Oct-15 09:48
Pages sent : 003
Status : OK

Job number : 961

*** SEND SUCCESSFUL ***



U.S. Department of Justice
Immigration and Naturalization Service
Reno Office

1551 Corporate Blvd.
Reno, NV 89502

FAX TRANSMITTAL COVER SHEET

TRANSMITTED TO:

OFFICE/DEPARTMENT: NATIONAL VISA CENTER
ATTENTION: TDV-ADITORY
FAX NUMBER: 603-334-0759 VOICE NUMBER: _____

TRANSMITTED BY:

FROM: DONNA DAVIS
DATE: 10/15/00
DEPARTMENT: EXAMS
FAX NUMBER: (775) 784-5899 VOICE NUMBER: (775) 784-5186

NUMBER OF PAGES INCLUDING THIS COVER SHEET: (3)

REMARKS: Please send DV-Packet
2nd request - 1st request was on 5/19/00

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I, Margaret W. Pascual, am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 2816 E. Chapman Ave., Orange, CA. 92869.

On May 23, 2002, I served the foregoing document described as:

WRIT OF MANDAMUS

On interested parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope addressed as follows:

Trial Attorney Unit	National Visa Center	U.S. Department of State
District Counsel Office	32 Rochester Avenue	General Counsel/Legal Dept.
U.S. Department of Justice	Portsmouth, HN 03801-2909	2201 C Street NW
2035 N. Central Avenue		Washington, DC 20520
Phoenix, Arizona 85004		

☒ **{BY MAIL}**

☒ I deposited such envelope in the mail at Orange, California. The envelope was mailed with postage thereon fully prepaid.

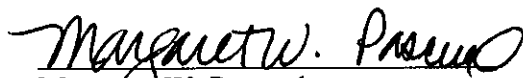
☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Orange, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the offices of the addressee.

☒ **(OTHER)** I arrange to be delivered the above described document by Federal Express who in turn delivered the document to the above address.

☐ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction service was made.


Margaret W. Pascual